efficient competition from developing in California. Pacific's SGAT fails to comply with the Act due to the conspicuous absence of any provision that would allow meaningful use of combinations of unbundled network elements ("UNEs") by a CLC. This barrier to entry was specifically forbidden by the FCC. *FCC Order* ¶¶ 307-316.

As evidenced by Mr. Garret's position, the Commission must read the SGAT as making combinations of UNEs unavailable unless there is prior payment by the CLCs. This is further proof that the SGAT, as it is written, cannot be used to order or provision services from Pacific in compliance with the Act since Pacific's interpretation is an onerous addition to the requirements of the SGAT. *See TA96* § 251(c)(3). Until actual UNEs, and combinations thereof are actually available, and can be ordered and provisioned by any CLC in a nondiscriminatory manner, the SGAT remains a document of empty promises.

5. Dark Fiber And Loop Subcomponents - Loop Feeder, Loop Concentration, And Loop Distribution.[51]

Section 251(c)(3) of the Act requires Pacific to provide nondiscriminatory access to its network elements "on an unbundled basis at any technically feasible point" on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Attachment 6 to the SGAT, dealing with access to unbundled elements, does not require Pacific to provide CLCs with

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[51] Sprint and the CCTA do not join in the comments of this section (V.E.5.).

access to dark fiber as an unbundled element.[52] Dark fiber, by itself, is incapable of carrying telecommunications, and is "activated" only by combining it with other telecommunications equipment at both ends. Dark fiber, thus, meets the Act's definition of a network element under Section 3(45), 47 U.S.C. § 153(45), in that it is "equipment used in the provision of a telecommunications service." The statute does not require that network elements be used currently in order to qualify for access to UNEs.[53] Therefore, the SGAT violates Section 251(c)(3) of the Act.

The unavailability of dark fiber to new local telephone entrants will diminish competition and increase prices to consumers. Fiber optic facilities offer the highest transmission speeds, greatest capacity and largest bandwidth of telecommunication network equipment. Permitting ILECs to withhold available state-of-the-art telecommunications facilities from their competitors, where access to UNEs is clearly feasible technically, will advantage monopoly providers and undermine competition for the most technologically advanced local telecommunications services. This directly contradicts the purposes behind Section 252's network unbundling requirements.

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52 Dark fiber is a fiber optic telecommunications facility without the associated electronic equipment necessary for actually transmitting telecommunications.

53 Where an ILEC has network elements available, which are used in the provision of telecommunications services, it does not matter for purposes of the Act whether they are currently in use or will be used when demand justifies their activation.

Similarly, Attachment 6 to the SGAT makes no provision for "subloop unbundling", that is, access to unbundled local loop subcomponents -- loop feeder, loop concentration and loop distribution. Neither has Pacific made any showing nor has the Commission found that subloop unbundling is not technically feasible. To the contrary, because the Commission has found it technically feasible for GTEC, and also required GTEC to offer subloop unbundling by allowing MCI and AT&T to interconnect at the GTEC feeder/distribution interface, the presumption must be that subloop unbundling is also technically feasible for Pacific. MCI/GTEC Arbitrator's Report, A.96-09-012, December 11, 1996 at 29; AT&T/GTEC Arbitrator's Report, A.96-08-041 (slip at ¶ 1). As the FCC noted in the FCC Order at ¶ 204, "[S]uccessful interconnection or access to an unbundled element at a particular point in a network, using particular facilities is substantial evidence that interconnection or access is technically feasible at that point, or at substantially similar points in networks employing substantially similar facilities."

The FCC placed the burden of proof on ILECs to prove that access to unbundled elements - or combinations thereof -- at a particular point is not technically feasible. *FCC Order* ¶ 205. The FCC went on to state, ". . . we believe that sub-loop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient" and we "encourage states to pursue sub-loop unbundling in response to requests for sub-loop elements by competing providers." *FCC Order* ¶ 390, fn. 851.

Section 251(c)(3) requires Pacific to offer access to unbundled elements at any technically feasible point in its network. The fact that GTEC offers interconnection at the feeder/distribution interface makes it very difficult for Pacific to rebut the presumption that it is, indeed, technically feasible. On its face, the SGAT does not comply with the requirements of Section 251(c)(3), as it fails to offer access to unbundled subloop components.

6. Advanced Intelligent Network.

Pacific's SGAT does not require Pacific to provide query access to Pacific's Advanced Intelligent Network ("AIN") using Pacific's switch until some unspecified date when the access might be provided to another CLC or mutually agreed to by the parties to the SGAT. There is no commitment as to the time when Pacific, using a CLC switch, will provide the same access to the unbundled switch. The SGAT merely states these requests will require "special work" and will be handled on a case-by-case basis. SGAT, Attachment 6, Sections 6.6.4 and 6.6.5. The FCC Order specifically considered these issues and found that access to AIN using either the ILEC or CLC switch is technically feasible today and must be provided by the ILEC pursuant to section 251(c)(3). *FCC Order* ¶¶ 486-487.

Similarly, the SGAT does not currently provide CLC personnel with access to its AIN Service Creation Environment ("SCE"). SGAT, Attachment

6, Sections 7.3.1, 7.3.2.2, and 7.3.4.2. This is also contrary to the requirements of the FCC Order, which specifically found that such access to unbundled elements is technically feasible today and ordered ILECs to provide such unbundled access pursuant to Section 251(c)(3). Without such access, CLCs will not receive service at parity with the service that Pacific provides to itself (as required under the Act). *FCC Order* ¶ 495. Again, the SGAT does not, on its face, meet the requirements of Section 251(c)(3), because it does not provide the requisite access to either AIN or to AIN SCE.

7. **Rights-Of-Way.**

The SGAT allows Pacific to reserve capacity in its rights-of-way for six and 18 months, respectively, depending on whether Pacific has a completion schedule for a construction project related to such rights-of-way. SGAT, Attachment 7, Section 3.5. Section 224(f)(1) of the Act requires every "utility," including Pacific, to provide nondiscriminatory access to all its poles, ducts, conduits, and other rights-of-way to competing local carriers. Section 224(f)(2) allows electric utilities to deny access where there is insufficient capacity for reasons of "generally applicable engineering purposes." This right to deny right-of-way access based on reserved capacity for future requirements does not extend to ILECs or BOCs under the Act.

In the FCC Order, the FCC addressed whether ILECs can reserve right-of-way capacity. Contrary to Pacific's position in the SGAT, the FCC specifically held that utilities providing telecommunications or video services cannot reserve capacity in their rights-of-way. *FCC Order*, ¶¶ 1169-70. These provisions of the FCC Order are not subject to the stay issued by the U.S. Court of Appeals for the Eight Circuit.

Pacific's unlawful reservation of capacity in its SGAT violates the Act's nondiscrimination obligation with respect to poles, ducts, conduits and other rights-of-way. By reserving excessive space for itself on these rights-of-way, Pacific would be in a position to effectively prevent competitors from entering the local telephone market, because CLCs will not be able to build their networks or lines and transmission facilites. This is especially true in urban markets, where current utilities control virtually all available right-of-way easements. As a result, the reservation of capacity will impede competition, injure CLCs, and deprive California consumers of the choice of local telephone companies contemplated by the Act.

F. **No Parity In Access To Number Portability.**

The checklist requires Pacific to provide interim local number portability ("INP") "through remote call forwarding, direct inward dialing trunks, or other comparable arrangements." *TA96* § 271(c)(2)(B)(xi). Section 251 also requires number portability. Effective number portability is "critical to opening the local marketplace to competition." *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-286, ¶ 113 (July 2, 1996) (hereinafter *"FCC LNP Order")*. While the SGAT lists INP provisions from the AT&T Interconnection Agreement, Pacific's clever omission of other INP provisions actually makes nearly every INP option unavailable. In fact, a careful reading of the SGAT's Attachment 15 reveals that until permanent number portability ("PNP") is available, Pacific will provide INP only through remote call forwarding ("RCF"). SGAT, Attachment 15, Section 1.1. (In contrast, the AT&T Interconnection Agreement allows for other INP options, although these are not yet available. AT&T Interconnection Agreement, Attachment 15, Section 2.2.)

In drafting its SGAT, Pacific's deletion of the section of the AT&T Interconnection Agreement which allowed other INP options to be made available was clearly not accidental.[54] The omission of this language makes it impossible for a CLC to obtain any INP option other than Pacific's current RCF INP offer. Not only is this inadequate under the Act and the *FCC LNP Order*, but additionally the current Pacific RCF INP tariff is at odds with the requirement for competitively neutral cost recovery.[55]

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54 Pacific failed to identify this omission in response to a March 5, 1997 data request specifically asking Pacific to identify the differences between its SGAT and its interconnection agreements with AT&T, MCI and Sprint.

55 *See FCC LNP Order* ¶ 138: "In contrast, requiring the new entrants to bear all of the costs, measured on the basis of incremental costs of currently available number portability methods, would not comply with the statutory requirements of Section 251(e)(2). Imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability. Moreover, ... incremental cost-based charges would not meet the first criterion for "competitive neutrality" because a new facilities-based carrier would be placed at an appreciable, incremental cost disadvantage relative to another service provider, when competing for the same customer." Even by its own

Pacific's calculated refusal to provide INP options other than RCF violates the checklist and the Act. In general, number portability options must be offered to new entrants as soon as they are available. *See FCC LNP Order* ¶ 115 ("when a number portability method that better satisfies the requirements of section 251(b)(2) than currently available measures becomes technically feasible, LECs must provide number portability by means of such method"). And the FCC has stated that LECs must provide INP "through RCF, DID, and other comparable methods," meaning that Pacific is not free to dictate which methods it makes available to new entrants upon their entry. *Id.* ¶ 110 (emphasis added)); *see also id.* ¶ 111.

DID and RI are the only effective means of providing INP to larger customers. For example, unlike RCF, DID does not "waste" two assignable numbers for every ported subscriber line. In addition, when a larger block of numbers is to be ported, RI is vastly superior since it can be provisioned with a single operation, while using RCF requires a separate operation for each individual number to be ported. The Act requires INP to be provided "with as little impairment of functioning, quality, reliability, and convenience as possible." *TA96* § 271(c)(2)(B)(xi); *FCC LNP Order* ¶¶ 110, 115. Given that the FCC has confirmed the importance to new entrants of INP

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admission, Pacific's RCF INP tariff fails this test. *See* Petition of Pacific Bell to Modify Decision 96-04-052, filed with the Commission on August 28, 1996.

alternatives such as DID and RI, Pacific's failure to provide them does not satisfy the checklist.

Even if one assumes charitably that Pacific's omission of a paragraph indicating the availability of other INP options was a mistake, the omission renders the list of INP methods in the SGAT's Attachment 15 nothing more than descriptions of unobtainable INP methods. However, Pacific has also made subtle changes to the descriptions of those INP methods which render the methods useless even if available. For example, the SGAT description of Flex DID does not include SS7 signaling, in contrast to the AT&T Interconnection Agreement. AT&T Interconnection Agreement, Attachment 15, Section 2.3.2; SGAT, Attachment 15, Section 2. The description of LERG Reassignment is also markedly different, and the SGAT description ensures that no CLC can make use of this portability method. The use of LERG Reassignment appropriately applies to a customer with an entire NXX code dedicated to that customer, generally a very large business customer. The most efficient means of "porting" such a customer would be to reassign the NXX in the LERG to the new service provider's switch. Because LERG updates require some time to accomplish, route indexing INP would be used temporarily to complete calls to the customer until the LERG changes are effective. This concept is embodied in the AT&T Interconnection Agreement, Attachment 15, Section 2.5. In contrast, the SGAT description of LERG Reassignment speaks of portability, not of a customer, but of the

NXX code, "when all customers in the NXX are migrating to the Ported-to Party." SGAT, Attachment 15, Section 2.2. In addition, the SGAT includes no provision for route indexing INP until LERG changes are effective. This rewrite ensures that no CLC can ever employ this non-option.

Other provisions of the SGAT's Attachment 15 also demonstrate Pacific's failure to fulfill its checklist obligations, and display Pacific's artful effort in making "generally available" terms and conditions which have already been rejected by the industry, regulators, or both. For example, the treatment of disconnected or "vacant" numbers under permanent portability is not only internally inconsistent; it is at odds with agreed-upon industry guidelines. *See* SGAT, Attachment 15, Section 4.2. The SGAT requires that parties agree to release vacant numbers back to the original carrier, and that the parties will comply with industry guidelines established for the treatment of vacant numbers. In fact, the California Local Number Portability Task Force has addressed this issue, and the guidelines established by the Task Force provide that the Ported-To Carrier has the option of either keeping or returning a disconnected number. Pacific may not have been pleased with the outcome of the Task Force determination of this issue, but the vote wasn't even close, and the SGAT is not the vehicle to revisit this issue.[56]

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56 *See* discussion of "Snapback" at pages 4-7 of the CA LNP Task Force Approved Minutes of its December 6, 1996 regular meeting. *Sixth Report of the California Local Number Portability Task Force On Progress In Meeting The FCC Schedule For Implementation Of Permanent Local Number Portability*, filed with the CPUC January 13, 1997.

Similarly, Attachment 15, Section 4.3 of the SGAT includes conditions on interLATA carriers that have already been rejected by the FCC, and that are unenforceable in any case. Attachment 15, Section 4.3 requires interLATA carriers, who would not be party to the SGAT terms, to perform a database query for PNP. The FCC recently specifically rejected Pacific's request "to require all intermediate (N-1) carriers, including interexchange carriers, to implement the capability to query number portability databases in order to route calls properly."[57] This same Section 4.3 also includes language which would allow Pacific to block the delivery of unqueried "default routed" calls. The FCC was not convinced that "Pacific's hypothetical situation" would arise often.[58] It perhaps bears mention that in January, without explanation, Pacific withdrew its request to present the issue of "unqueried calls" to the California LNP Task Force. Pacific's tack is now obvious: it chose to place in the SGAT what it could not persuade regulators or the industry. [59]

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[57] *First Memorandum Opinion And Order On Reconsideration*, CC Docket 95-116, FCC 97-74, Released March 11, 1997, ("FCC LNP Reconsideration Order"), ¶124-126.

[58] *FCC LNP Reconsideration Order*, ¶ 125.

[59] Pacific attempted to include language similar to its SGAT Attachment 15, Section 4.3 in its AT&T Interconnection Agreement, by presenting these terms to AT&T following the conclusion of hearings and the release of the Arbitrator's Report. AT&T rejected these terms, which had never before been presented to AT&T, and which were not part of any executed interconnection agreement. Because of AT&T's familiarity with the offending language, AT&T believes the reference in Section 4.3 to "those inquired calls" is a typographical error which should read "those unqueried calls."

In at least one other respect, the SGAT's Attachment 15 fails to reflect the Commission's orders, and betrays Pacific's anticompetitive efforts to charge CLCs for the use of NXX codes. SGAT, Attachment 15, Section 6.1.3 states that Pacific shall not charge for what it has referred to as "NXX code opening costs" "as long as the requirement set forth at page 84 of Commission D. 96-03-020 remains in place." Pacific is certainly aware that the pertinent aspect of Commission D. 96-03-020 has not been "in place" since December 20, 1996, when the Commission unanimously rejected Pacific's requests to be paid for NXX code openings.[60] The SGAT should be modified accordingly.

G. Pacific's SGAT Contains General Terms And Conditions Which Provide It With A Disincentive To Meet Its Legal Obligations, Contrary To The Requirements And Fundamental Purpose Of the Act And The FCC Order.

1. The SGAT's Liability Limits Violate The Act .

Section 251 of the Act requires incumbents to make available interconnection, unbundled elements and resale on just and reasonable terms and conditions. Yet, according to the SGAT; Pacific's maximum annual contract liability for breach of the SGAT is the amount of contract payments that Pacific owes to the CLC under the SGAT during the contract year in which the cause of action arises. This is ludicrously egregious and nonreciprocal, as Pacific will be hard-pressed to suggest that it is obligated to

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[60] Decision 96-12-067, December 20, 1996.

pay CLCs for much of anything, if anything at all, under the SGAT. On the other hand, the CLC could be liable to Pacific for its annual contract payments to Pacific, potentially a substantial percentage of the CLC's total local service revenues. SGAT, Preface, Section 9. Even with this absolute bar to any significant common law remedies for breach under the agreement, the SGAT goes on to prohibit the recovery of consequential damages for other than willful or intentional conduct or bodily injury. *Id.* These issues were arbitrated in the MCI/Pacific arbitration and the Commission rejected such totally unjustified limitations of liability.

Liability limitations are unjust and unreasonable under the Act because they permit the monopoly carrier to violate an agreement's requirements for interconnection, unbundling, and resale with financial impunity. By limiting the remedies for contract breach, Pacific retains the right to violate its obligations under the Act, and effectively prevent competitive entry into the local telephone market, for a price tag of no more than the annual payments it may owe a CLC under the SGAT. As discussed this will amount to very little - certainly far less than the market value of its current monopoly. Because ILECs have the incentive and ability to thwart competition, the Act demands that ILECs meet mandatory market-entry obligations. Therefore, a limitation on remedy for a breach of Section 251 is directly inconsistent with the purposes of the Act. *FCC Order* ¶ 129.

Instead of providing quick, effective, and easily discernible remedies, the SGAT focuses entirely on procedures such as alternative dispute resolution and court enforcement. *See generally* SGAT, Attachment 3. Therefore, if Pacific fails to satisfy its promises under the agreement, CLCs will likely suffer months of further delay by having to resort to those often cumbersome procedures. And, even if a CLC eventually succeeds, Pacific will likely have to do only what it was supposed to do anyway. In sum, Pacific will suffer absolutely no penalty, financial or otherwise, if it fails to meet its duties under the SGAT.[61]

Because the very terms and conditions of the SGAT give Pacific incentive to not meet its obligations under the Act, the Commission has even stronger evidence that Pacific has no intention to provide CLCs with the elements necessary to enter the local market in an acceptable manner. While the SGAT is laden with feel-good phrases like "as mutually agreed by the parties," it is no secret that Pacific will interpret its SGAT to keep potential competitors away as long as possible. It is thus up to the Commission to ensure that Pacific will face meaningful penalties if it continues on its monopolistic path.

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[61] In fact, the SGAT includes no discussion of potential liquidated damages if certain performance thresholds are not met. This is in contrast to the AT&T interconnection agreement which lays out liquidated damages for delayed CSRs, service order discrepancies, and other performance lapses.

2. The SGAT's CLC Performance Standards And Associated Penalties Are Unfair .[62]

Ostensibly to compensate the parties for the day to day performance problems which may be encountered under any contract, the SGAT provides for performance standards and remedies. *See generally* SGAT, Attachment 17. Given the limitations of liability discussed above, these performance standards and remedies become, in effect, the exclusive remedy for breach of the terms of the SGAT.

The performance standards and associated penalties in Attachment 17 are wholly lopsided in favor of Pacific and make Pacific's performance conditional on the CLC meeting forecasting obligations which are unreasonable, not authorized by the Act, and inconsistent with the terms of the Act. As such, the forecasting obligations the SGAT would impose on CLCs constitute an unreasonable restriction on Pacific's performance of its interconnection, access to unbundled elements, and resale obligations under the Act. Nowhere in the Act or in the FCC Order are an ILEC's Section 251 duties made contingent on a CLC's forecasting performance.

Section 251(c)(3) requires that unbundled elements be provided on just, reasonable and non-discriminatory terms and conditions. Section 251(c)(4)(B) proscribes an ILEC's imposition of unreasonable or discriminatory conditions or

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62 TURN has no position on the issues raised in this section (V.G.2.) of these Comments at this time.

limitations on resale. Imposing penalties on a new entrant, if forecasts for its future demand for UNEs prove to be different from its actual requirements, is unreasonable in that such penalties are completely unrelated to whether the incumbent suffers any cost or injury as a result of an erroneous forecast.

Implementing the nondiscrimination mandate of Section 251(c)(3) and Paragraphs 218 and 315 of the FCC Order require that UNEs be provisioned on the same basis for new entrants as an ILEC treats its own services and customers. The FCC Order does not permit exceptions to this requirement of parity between ILECs and competitors, regardless of whether or not a competitor has inaccurately forecast its future demand for network elements.

These performance standards and penalties apply under the SGAT, if a CLC errs in forecasting its demand for UNEs. The SGAT also excuses Pacific from the performance standards otherwise applicable to Pacific, if a CLC has erred in its forecasts. The forecasting requirements are onerous and likely will not be accurately met by CLCs, in that the forecasts are required to be made by LATA for the first two quarters and thereafter by serving wire center. SGAT, Attachment 17, Section 12. CLCs do not market their services or forecast demand by LATA and certainly not by Pacific's serving wire centers. Exempting Pacific from adherence to standards governing their practical, day-to-day performance of the administrative and network engineering tasks, associated with its legal obligation to provide interconnection by requiring a new entrant to meet unreasonably onerous forecasting requirements, will, as a practical matter, deprive new entrants of the ability to hold Pacific to compliance with the myriad technical details associated with actual implementation of interconnection, resale and unbundling.

3. The SGAT's ADR Provision Precluding Commission Complaints Violates The Act.[63]

Finally, Pacific has recently interpreted the Alternative Dispute Resolution ("ADR") provisions of MCI's and AT&T's interconnection agreements with Pacific as precluding a Commission complaint alleging violations of the P.U.C. Code, Commission decisions or rules, if the alleged violations can be said to arise under the agreement. *Pacific's Motion to Dismiss the Complaints of MCI and AT&T*, dated February 14, 1997 in CPUC Complaint Case Nos. 96-12-026 and 96-12-044 (consolidated). The SGAT contains a very similar ADR provision. SGAT, Preface, Section 16 and Attachment 3. The Coalition disagrees that the ADR provision, as written, precludes a complaint before the Commission. The ADR provision allows a party to invoke a remedy "permitted by the Act or FCC regulations thereunder." As noted above, the FCC has held that nothing in the Act revokes existing remedies provided for by statute or common law. Thus, a Commission complaint is permitted under the Act and FCC regulations. To the extent that Pacific succeeds in enforcing its interpretation, or if the Commission accepts it, the ADR provisions of the SGAT are contrary to the Act and FCC Order.

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[63] TURN takes no position on the issues discussed in this section (V.G.3.) of these Comments at this time.

V.
CONCLUSION

For the foregoing reasons, the Commission should reject Pacific's SGAT for failure to meet the conditions of §§ 252(f), 251, and 252(d) of the Act, as well as the FCC Rules relating thereto. The Commission's Order rejecting the Statement should also expressly confirm that the Statement fails to meet the requirements of the 14 point checklist under Section 271 and therefore cannot be used to substantiate any Track B interLATA relief request by Pacific.

March 21, 1997

Respectfully submitted on behalf of,

CALIFORINIA TELECOMMUNICATIONS COALITION

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **Comments of California Telecommunications Coalition on Pacific Bell's Proposed Statement of Generally Available Terms** to all known parties to **A.97-02-020** by mailing a properly addressed copy by first class-mail with postage prepaid to each party named in the official service list.

Executed on March 21, 1997 at San Francisco, California.

Katy M. Lindsay

Katy M. Lindsay

ATTACHMENT A

Doug Garrett
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PACIFIC BELL.
A Pacific Telesis Company

February 28, 1997

Mr. Steve Huels
Division Manager
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MAR 03

Dear Steve,

The following is in response to recent correspondence from you and Ms. Hedg-peth concerning the provisioning of unbundled element combinations.

The Agreement is clear that our provisioning of unbundled elements and unbundled element combinations is not to be presumed. Rather, our obligation is as specified in Attachments 6 and 7 of the Agreement. In addition, Pacific has no obligation to provision the specific combinations identified in Attachment 7 until AT&T commits to pay the appropriate costs associated with development of each combination. This requirement appears in footnote 9 to Attachment 7, of which AT&T was well aware prior to signing the Agreement. In fact, in its December 4, 1996 brief, AT&T asked the Commission to strike the footnote. For good reason, the Commission declined AT&T's extreme position.

Contrary to the assertions in Ms. Hedg-peth's letter, Pacific is not demanding that AT&T place a firm order for the combinations. Pacific is only demanding that AT&T comply with the terms of the Agreement signed by AT&T, that is, to commit to pay the development costs for the combinations. Even in the absence of the clear contractual language, it would be nonsensical and wasteful to assume that Pacific would develop ordering and provisioning and provide over 50 combinations with no recovery of development costs. This is especially true as AT&T has indicated that it may never order many of the combinations. In light of AT&T's or any other CLEC's lack of commitment to order any combination, it would be a classic example of economic waste to require Pacific to move forward with implementation, let alone rapid implementation, without AT&T's commitment to pay the development cost.

Footnote 9 is an integral part Attachment 7. We would not have agreed to the extremely aggressive implementation schedules in Attachment 7 without AT&T's agreement to all the terms and conditions in Attachment 7, including footnote 9. Obtaining AT&T's commitment to pay the development cost was critical in light of AT&T's refusal to commit to order any unbundled element or combination. In fact, Mr. Rall told Pacific that when he developed Attachment 7, in addition to combinations AT&T wanted, he listed any combination he thought might be ordered by other CLECs.

In inserting footnote 9 as an integral part of its commitment to develop the specific combinations in Attachment 7, we wanted to avoid a situation where AT&T or any other competitor could force us to waste valuable time and resources developing combinations that no CLEC would ever order or use. We cannot waste resources on the development of unbundled network elements or combinations that will not be ordered.

That said, Pacific will move forward with the implementation of any one or all of the combinations identified in Attachment 7 as soon as AT&T agrees that it will pay the development costs associated with the development of such combinations whether or not AT&T subsequently orders such combination. Pacific will provide AT&T with development cost estimates for those combinations for which AT&T has a strong interest. The availability dates for such combinations will be defined at the time AT&T commits to pay development costs.

Pacific does not object to following the practice set forth in §8 of Attachment 8 for the determination of all TBD prices. This section requires AT&T and Pacific to meet and confer to attempt to reach agreement on the rates, and submit any dispute to alternative dispute resolution, with the arbitrated decision subject to modification by the Commission. However, as noted in §8, AT&T may not order any combination until the price for the requested combination has been resolved. We remain ready to meet with you to discuss the rates for any unbundled element of unbundled element combination lists as TBD in the agreement.

Thank you for your careful review of this issue. We remain committed to the proper implementation of our agreement, and look forward to working with AT&T in this regard.

Sincerely,

Doug Garrett

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

IN RE:	Consideration of BellSouth Telecommunications, Inc.'s Services Pursuant to Section 271 Of the Telecommunications Act Of 1996	)	Docket No. 6863-U
	BellSouth Telecommunications, Inc. Statement of Generally Available Terms and Conditions Under Section 252 (F) of the Telecommunications Act of 1996	)	Docket No. 7253-U

INITIAL COMMENTS OF CONSUMERS' UTILITY COUNSEL

I. Introduction

The only issue upon which CUC comments at this time concerns whether the Statement of Generally Available Terms and Conditions ("SGAT") filed by BellSouth Telecommunications, Inc. ("BellSouth") should be approved by the Georgia Public Service Commission ("Commission") pursuant to Section 252(f) of the Telecommunications Act of 1996 ("Federal Act"). That is the only issue confronting this Commission as concerns Docket No. 7253-U. CUC will comment on or before March 25, 1997, inter alia, regarding the extent to which the SGAT complies with Section 271 of the Federal Act, and with respect to any other issue in these dockets. For purposes of Docket No. 7253-U, the Commission need not - and should not - make any findings with respect to Section 271, including whether the SGAT satisfies the "competitive checklist" as set forth under 271(c)(2)(B). Indeed, with respect to Docket No. 7253-U, the order that resolves the issue as to whether the SGAT complies with Section 252(f) should expressly state that no finding or conclusion is made with respect to Section 271, and that the Commission's order should not be construed as determining any issue with respect to Section 271. The extent to which the SGAT is "checklist compliant" and whether the Commission has recommendations with respect to Section 271 are issues that should be dealt with separately from the narrow focus of Docket No. 7253-U, which concerns only section 252(f) of the Federal Act.

II. Comparison of Sections 252(f) and 271 of the Federal Act

Section 252(f)(1) of the Federal Act states that the SGAT shall indicate the terms and conditions that BellSouth "generally offers" within Georgia. Hence that subsection does not require that BellSouth have "implemented," or even that it has previously "provided," access and interconnection on a non-discriminatory basis. Section 252(f)(2) requires that the SGAT comply with section 252(d) and with section 251 of the Federal Act. Section 252(d) requires that this Commission determine just and reasonable, cost-based rates for interconnection and network elements, as well as for transport and termination, and that the Commission determine wholesale prices for telecommunications services (resale). As will be discussed below, this Commission has determined interim rates and wholesale prices as a result of several arbitrations and two (2) other proceedings. Section 251 states that telecommunications carriers in general, as well as local exchange carriers ("LECs") and incumbent LECs in particular, have certain "duties," among which (as concerns LECs) are duties "to provide" interconnection, unbundled network elements, collocation and resale. Thus section 251 is essentially forward-looking in its scope. Other than by requiring that terms be "just, reasonable, and nondiscriminatory," section 271 emphasizes the